

## AGREEMENT FOR ENGINEERING SERVICES

This agreement, made by and between the **CITY OF TUPELO**, located in **LEE** County, Mississippi, hereinafter referred to as the Owner, and Cook Coggin Engineers, Inc., a Mississippi Corporation hereinafter referred to as the Engineers, on \_\_\_\_\_, 2024.

The Owner intends to construct a **LIFT STATION REHABILITATION AT COLONIAL ESTATES** and has employed the Engineers, who agree to perform the various professional engineering services required for the design and construction as stated herein;

### WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

#### SECTION A - PLANNING AND DESIGN ENGINEERING SERVICES

That the Engineers shall furnish Planning and Design Engineering Services as follows:

1. The Engineers will perform the necessary design investigations, accomplish the design and prepare the construction plans, specifications and contract documents. Design investigations will be limited to those required to perform the design and to prepare the plans and specifications.
2. The Engineers will prepare an opinion of probable cost based on the construction plans and specifications. However, since the Engineers have no control over the cost of labor, materials, equipment, services provided by others or over contractors' pricing methods, or over market conditions or competitive bidding, the opinion of probable cost will be based on the Engineers' professional experience and judgment; but the Engineers cannot and do not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by them.
3. Prior to the advertisement for bids, the Engineers will provide the necessary copies of plans, specifications, and contract documents for the Owner and the appropriate Federal, State, and local agencies from whom approval of the project must be obtained.
4. The Engineers will furnish additional copies of the plans, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but will charge the prospective bidders for such copies.
5. The Engineers will attend the bid opening, tabulate the bid proposals, make an analysis of the bids and furnish information for the Owner's use in awarding the contracts for construction.

6. After award of each contract, the Engineers will furnish the Owner the necessary contract documents for execution. The notice of award and the notice to proceed shall also be prepared by the Engineers for execution by the Owner.

## SECTION B - CONSTRUCTION ENGINEERING SERVICES

That the Engineers shall furnish Construction Engineering Services as follows:

1. The Engineers will provide general construction overview of the work of the Contractor as construction progresses by making site visits at intervals appropriate to the various stages of construction as the Engineers deem necessary, in order to observe as an experienced and qualified professional, the progress and quality of the Work. Such visits and observations are not intended to be exhaustive but rather shall consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents and with the design intent. Such overview shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract.
2. The Engineers will review for general conformance with the design concept necessary shop and working drawings furnished by the Contractor.
3. The Engineers will provide bench marks and/or reference points to be used by the Contractor in staking the construction.
4. The Engineers will review the Contractor's estimates for progress and final payments.
5. The Engineers will make final review of the completed construction and provide a written record of such to the Owner.
6. The Engineers will prepare the summary change order.
7. The Engineers will provide the Owner with one set of record drawings. Record drawings will be developed from the construction plans based upon information provided by the Contractor. Because these drawings are based on unverified information provided by other parties which will be assumed to be reliable, the Engineers cannot and do not warrant their accuracy.

## SECTION C- OWNER OBLIGATIONS

That Owner agrees to perform certain duties as follows:

1. The Owner shall provide access to and make all provisions for the Engineers to enter upon public and private lands as required for the Engineers to perform such work as surveys and inspections in the development of the Project; and the Owner will indemnify the Engineers from any claims of trespass with respect thereto.
2. The Owner will provide property surveys, property plats and legal descriptions.
3. The Owner will negotiate for land rights and easements as necessary.
4. The Owner will provide topographies, soils investigations, environmental assessments, wetlands and flood plains determination as required, except as provided for elsewhere in this agreement.
5. The Owner will arrange for field and laboratory testing for quality control such as density and material tests as necessary, except as provided for elsewhere in this agreement.

## SECTION D - COMPENSATION FOR PLANNING AND DESIGN SERVICES

That the Owner shall compensate the Engineers for planning and design engineering services based on a percentage of the Construction Contract Amount (Base Bid plus Additive Alternates, if any) as shown in Table I set forth in Attachment I which is attached hereto and made a part hereof by this reference.

The compensation for planning and design engineering services shall be payable in the following manner:

1. A sum equal to ninety-five percent (95%) of the total compensation for planning and design services based on the Engineers' Construction Cost Estimate (Base Bid plus Additive Alternates, if any) after completion and submission of the construction plans, specifications, cost estimates, and contract documents.
2. A sum equal to five percent (5%) of the total compensation for planning and design service based on Construction Contract Amount (Base Bid plus Additive Alternates, if any) immediately after the Engineers provide the analysis of the bids and furnish information for awarding the Contract.

Payment under this section will be adjusted after the construction contracts are awarded such that the aggregate of all sums paid to the Engineers under this section will not exceed 100% of the compensation determined on Construction Contract Amount (Base Bid plus Additive Alternates, if any).

If the work is bid in multiple projects, contracts or phases, each project, contract or phase will be considered a separate project regarding compensation.

If the work is not let for public contract, compensation will be based on the Engineer's Construction Cost Estimate (Base Bid plus Additive Alternates, if any).

#### SECTION E - COMPENSATION FOR CONSTRUCTION ENGINEERING SERVICES

That the Owner shall compensate the Engineers for construction engineering services based on percentages of Total Actual Construction Cost as shown in Table II set forth in Attachment I.

The compensation for construction phase engineering services shall be paid on a periodic basis during the construction period based on percentage ratios identical to those approved by the Engineers as a basis upon which to make partial payments to the Contractor.

#### SECTION F - SPECIAL SERVICES

That, the Engineers shall furnish or obtain from others Special Services of the following types which will be paid for by the Owner as indicated below.

1. Services provided in conjunction with the Clearing House Environmental Reporting, Environmental Review Process and related reporting, which may include, but not limited to, Cultural Resource Survey; Preliminary Wetland Delineation....etc.
2. Provisions of topographies, soils investigations, environmental assessments, stormwater pollution prevention plans and permit applications, wetlands and flood plains determination.
3. Provision of property surveys, plats, descriptions of needed land and easement rights with maps or plans related thereto; assistance in negotiating for land and easement rights.
4. Provision of roadway and railroad permit applications and assistance in administration of permit requirements and making changes to active permits.
5. Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration, public hearing or other legal or administrative proceeding involving the Project.
6. Services associated with preparation of Anti-degradation Report and NPDES Permit Application.
7. Development of hydraulic assessments and/or hydraulic models and conducting hydraulic simulations to assess existing system deficiencies and to determine improvements needed to satisfy minimum regulatory requirements and/or system specific design criteria.

8. Design engineering services in connection with change orders to reflect modifications of the ongoing project.
9. Field and laboratory testing for quality control such as soil density and construction material tests.
10. Additional or extended services during construction made necessary by prolongation of the contract time of any prime contract by more than thirty days, or acceleration of the work schedule involving services beyond normal working hours.
11. Planning and design engineering services as set out under Section A to modify the construction documents for re-bid processes.
12. Services rendered in conjunction with start-up, operator training and preparation of operation and maintenance manuals.
13. Services in connection with preparing, re-formatting modifying or editing the construction documents for electronic or online bidding purposes.
14. Additional services in connection with the Project not otherwise provided for in this Agreement.

Payment for the special services specified in this section shall be based on the Special Services fee Schedule as set forth in Attachment II which is attached hereto and made a part hereof by reference. The Engineers will render to the Owner an itemized bill for such services.

#### SECTION G - GENERAL CONSIDERATIONS

1. The standard of care for engineering services performed or furnished by the Engineers under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The Engineers make no warranties, express or implied, under this Agreement, or otherwise, in connection with the Engineers' services. The Engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
2. The Engineers shall not at any time supervise, direct or have control over any contractor's work, nor shall the Engineers have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, nor for any failure of any contractor to comply with laws and regulations applicable to the contractor's work.
3. The Engineers neither guarantee the performance of any contractor nor assume responsibility for any contractor's failure to furnish and perform work in accordance with the contract between the Owner and such contractor.

4. The Engineers have no authority to exercise any control over any construction contractor in connection with their health or safety precautions. The Engineers' construction engineering services do not include any administration of jobsite safety which is the sole responsibility of the contractor. Any reference to safety in the contract document shall not create any duty of jobsite safety administration or oversight by the Engineers. Neither the professional activities of the Engineers, nor the presence of the Engineers at a jobsite shall relieve any contractor of their obligations and responsibilities for superintending or coordinating any health or safety precautions required by any regulatory agencies.

#### SECTION H - TERMINATION, ASSIGNMENT AND SPECIAL PROVISIONS


The Owner and the Engineers further agree to the following conditions:

1. Either the Owner or the Engineers may terminate this Agreement at any time with or without cause upon giving the other party 30 calendar day prior written notice. The Owner shall within 30 calendar days of termination pay the Engineers for services rendered and costs incurred to the date of termination in accordance with the compensation provisions of this contract.
2. The Owner acknowledges the Engineers' construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents (record drawings) prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to the Engineers. The Owner shall not reuse or make any modification to the construction documents without the prior written authorization of the Engineers. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineers, its officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Owner or any person or entity that acquires or obtains the construction documents from or through the Owner without the written authorization of the Engineers.
3. The Engineers have not offered any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by the Engineers or any of the Engineers' consultants as a consequence of this Agreement.
4. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineers respectively and its partners, successors, assigns, and legal representatives. Neither the Owner nor the Engineers shall have the right to assign, transfer or sublet his interest of obligations hereunder without written consent of the other party.
5. This Agreement may be amended with mutual consent to conform to funding agency requirements.

6. In the use of pronouns throughout this agreement where appropriate, the singular shall include the plural, the plural the singular.


In witness whereof the parties hereto have made and executed this Agreement the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Owner: City of Tupelo

By:   
Todd Jordan, Mayor  
Type Name & Title

Engineer: Cook Coggin Engineers, Inc.

By:   
Mark Weeden, Principal  
Type Name & Title

Attest:   
Kim Hanna, CFO  
Type Name & Title

Physical Address: 71 East Troy Street  
Tupelo, MS 38804

Mailing Address: 71 East Troy Street  
Tupelo, MS 38804

Phone: (662) 841-6513  
FAX: (662) 840-2075  
Email: [todd.jordan@tupeloms.gov](mailto:todd.jordan@tupeloms.gov)

Physical Address: 703 Crossover Road  
Tupelo, MS 38801

Mailing Address: P. O. Box 1526  
Tupelo, MS 38801

Phone: (662) 842-7381  
FAX: (662) 844-4564  
Email: [mweeden@cookcoggin.com](mailto:mweeden@cookcoggin.com)



COOK COGGIN ENGINEERS, INC.  
ENGINEERING SERVICES FEES SCHEDULE

AMOUNT	TABLE I	TABLE II
	PLANNING & DESIGN ENGINEERING SERVICES As a Percent of Construction Contract Amount (Base Bid plus Additive Alternates, if any)	CONSTRUCTION ENGINEERING SERVICES As a Percent of Total Actual Construction Cost
\$10,000	15.0	10.0
100,000	11.4	9.6
500,000	9.4	7.7
1,000,000	8.5	7.2
5,000,000	7.1	5.8
10,000,000	6.7	5.2
50,000,000	6.4	4.5

The fee for project cost falling between the figures shown in the table shall be interpolated to nearest one-tenth of one percent.

If the work is accomplished in phases requiring additional sets of contract documents, each phase is considered a new project for the purpose of determining compensation for planning, design and construction engineering services.

**ENGINEER SERVICES FEE SCHEDULE  
2024 PER DIEM RATES**

<u>CLASSIFICATION</u>	<u>RATE</u>	<u>CHARGE</u>
Sr. Professional Engineer	\$185	per hour
Professional Engineer Lvl 2	\$160	per hour
Professional Engineer Lvl 1	\$130	per hour
Engineer Lvl 2	\$115	per hour
Engineer Lvl 1	\$140	per hour
Professional Land Surveyor	\$155	per hour
Professional Geologist	\$90	per hour
Senior Civil Engineer Technician	\$75	per hour
Civil Engineer Technician	\$105	per hour
Sr. Designer	\$80	per hour
Designer	\$65	per hour
CADD (Operator)	\$135	per hour
Sr. Project Administrator	\$90	per hour
Project Administrator	\$100	per hour
Sr. Engineer's Representative	\$80	per hour
Engineer's Representative	\$105	per hour
Contract Administrator Lvl 2	\$80	per hour
Contract Administrator Lvl	\$75	per hour
Clerical	\$115	per hour
GIS Specialist	\$90	per hour
GPS/GIS Technician	\$100	per hour
Aerial Drone Technician	\$85	per hour
Sr. Lab Technician	\$65	per hour
Lab Technician	\$90	per hour
Survey Crew Chief	\$80	per hour
Survey Crew Member	\$150	per hour
Boring Rig	\$0.67	per hour
Passenger Vehicle Mileage	\$3.50	per mile
Boring Rig Mileage	\$185	per mile

Actual cost of special test and services of special consultants plus 15%

Rates are subjected to CPI adjustment annually.

**2024 MATERIAL TESTING SERVICES FEE SCHEDULE**

<u>Description</u>	<u>Unit Price</u>	<u>Unit</u>
<b><u>Soils/Aggregate Testing:</u></b>		
Laboratory Proctors	\$ 260.00	Each
Gradations (+10 Material)	\$ 90.00	Each
(-10 Material)	\$ 95.00	Each
Liquid/Plastic Limits	\$ 75.00	Each
Atterberg Limits (includes shrinkage limit)	\$ 100.00	Each
Nuclear Gauge Density Tests*	\$ 20.00	Each
Soil Cement Design	\$ 1600.00	Each
Soil Cement Cylinder Compression Test	\$ 50.00	Each
Permeability	\$ 665.00	Each
Topsoil	\$ 35.00	Each
 <b><u>Concrete Testing:</u></b>		
Concrete Testing* (Includes air content, slump, temperature and making concrete cylinders)		
Cylinder Compression Test	\$ 34.00	Each
Cylinder Compression Test with Tracking	\$ 36.00	Each
Beam Flexural Test	\$ 40.00	Each
 <b><u>Asphalt Testing:</u></b>		
HMA Mix Properties (Includes asphalt content, percent moisture, extraction & gradation, percent air voids & VMA)	\$ 440.00	Each
Field Testing:		
Nuclear Gauge Density Tests*	\$ 20.00	Each
Density and Thickness of Cores*	\$ 35.00	Each
Cationic Emulsions:		
Saybolt Furol Viscosity & Residue by Evaporation	\$ 400.00	Each
Anionic Emulsions:		
Saybolt Furol Viscosity & Residue by Evaporation	\$ 300.00	Each

**2024 Material Testing Services Fee Schedule (Continued)**

**Travel:**

Mileage - Passenger Vehicle	\$ 0.670	Per Mile
Boring Rig	\$ 3.50	Per Mile

**Equipment Time:**

Boring Rig**	\$ 150.00	Per Hour
Asphalt Coring Rig**	\$ 65.00	Per Hour

**Technician Time:**

Lab Manager (Prof. Engr. Lvl 1)	\$ 130.00	Per Hour
Sr. Lab Technician	\$ 85.00	Per Hour
Lab Technician	\$ 65.00	Per Hour
Sr. Field Technician	\$ 100.00	Per Hour

\* Additional charges for Personnel Time and Travel apply.

\*\* 4-hour Minimum plus Personnel Time and Travel apply.

Tests conducted and reported per applicable ASTM or AASHTO standards.

Rates are subject to adjustment annually.

**2024 REIMBURSABLE EXPENSE SCHEDULE**

Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8" x 11" Copies/Impressions (B&W)	\$ 0.25 /page
8" x 11" Copies/Impressions (Color)	\$ 1.00/page
11" x 17" Copies/Impressions (B&W)	\$ 0.50/page
11" x 17" Copies/Impressions (Color)	\$ 2.00/page
Larger Format Drawings (B&W)	\$ 0.75/sq. ft.
Larger Format Drawings (Color)	\$ 3.00/sq. ft.

Air Transportation	at cost
--------------------	---------

Meals and Lodging	at cost
-------------------	---------

Rates indicated do not include any applicable personnel related expenses.

Reimbursable Expenses are subject to review and adjustment annually.

## GENERAL TERMS AND SPECIAL CONDITIONS

Award is hereby made in the amount and for the period shown above of a grant under The Housing and Community Development Act of 1981 - Public Law 97-35), and as amended by the Housing and Urban-Rural Recovery Act of 1983, to Applicant Name "Subgrantee", in accordance with the plan set forth in the application of the above mentioned Subgrantee and subject to any attached revisions or special conditions.

This contract is subject to all applicable rules, regulations, conditions, and assurances as prescribed by the Mississippi Development Authority's (MDA) Community Development's Block Grant Program Final Statement, as well as the U.S. Department of Housing and Urban Development's Community Development Block Grants: State's Program Final Rule (24CFR Part 570), and to each and every Federal and State Statute and guideline affecting the application for, receipt of, and expenditure of Community Development Block Grant funds. It is also subject to such further rules, regulations, and policies as may be reasonably prescribed by the State or Federal Government consistent with the purposes and authorization of P.L. 97-35 and P.L. 98-8.

### **1. Application of the Mississippi Employment Protection Act of 2008.**

All grantees, recipients, contractors and companies known here after as "Contractor (Company)" entering into contracts with the Mississippi Development Authority represents and warrants that it will ensure compliance with the Mississippi Employment Protection Act (Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature) and will register and participate in the status verification system of all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" meansthe Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify program, or any other successor electronic verification system replacing the E-Verify Program.

Contractor (Company) agrees to maintain such compliance and, upon request of the State, to provide copy of each such verification to the State. Contractor (Company) further represents and warrants that any person assigned to perform services hereunder meet the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor (Company) understands and agrees that any breach of these warranties may subject Contractor (Company) to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years , with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor (Company) by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or

(c) both. In the event of such termination/cancellation, Contractor (Company) would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

This contract is also made subject to any and all conditions, special conditions, and assurances attached hereto and made a part hereof at the time of the award of these funds. The application submitted for these funds is incorporated by reference herein and made a part hereof, including any changes, modifications, deletions, or amendments contained therein. Any unauthorized change or amendment by the Subgrantee to the provisions of this contract shall be considered invalid, and MDA reserves the right not to reimburse the Subgrantee for any expenses or costs associated with such an unauthorized change or amendment.

MDA reserves the right to withhold grant funds or to terminate this contract for cause, if the Subgrantee fails to fulfill in a timely and proper manner the obligations under this contract or if the Subgrantee should violate any of the covenants, agreements, conditions, special conditions, or assurances of this contract, by giving written notice to the Subgrantee of the suspension or termination, specifying the effective date thereof, at least five (5) days before the effective date thereof.

The Subgrantee hereby agrees that the project and activities for which these grant funds are awarded shall constitute a fully completed and operative project upon conclusion, and the Subgrantee further agrees that in the event the costs of the project exceed the funds awarded under this contract, then it is understood that the state will not provide additional funding. The Subgrantee agrees to and understands that the CDBG award is limited to the amount under this agreement. Any cost overruns will be the sole responsibility of the Subgrantee. This grant shall become effective on the beginning date of the grant period stated in section 5 of page 1 provided that this contract shall have been fully completed, executed by the Subgrantee, and received in the office of MDA.

Subgrantees are prohibited from contracting with or making subawards to parties that are suspended or debarred or whose principals are suspended or debarred by MDA, any federal agency or other Mississippi state agency. Suspension or debarment may apply to new and/or ongoing transactions. An official copy of the MDA's Debarment and Suspension Policy and all applicable regulations and guidelines can be obtained from the MDA, Community Incentives Division by calling (601) 359-3179.

## **2. Debarment and Suspension**

The Mississippi Development Authority (MDA), Community Incentives Division (CID) must ensure that Sub-recipients (Local Units of Government and Non-Profit Agencies) of federal assistance are not debarred or suspended, or otherwise excluded from or ineligible from participation in Federal Programs under Executive Order 12549 and per 2 CFR Part 200. MDNCID has performed the required due diligence by verifying the SAM.GOV database to ensure at pre-award that all sub-recipients have met this certification. In the event that a Sub-recipient is found to be suspended, debarred, ineligible, or voluntarily excluded

from federal grant program participation at any time during the contract period, MDNCID may pursue available remedies , including suspension and/or debarment or termination of the existing grant agreement.

### **3. Special Conditions That Require Written Clearance**

#### **A. Mississippi State Department of Health Approval**

If applicable, prior to the release of any CDBG funds for water improvement construction, the Subgrantee shall provide written documentation that the plans and specifications have been approved by the Mississippi State Department of Health.

#### **B. Department of Environmental Quality Approval**

If applicable, prior to the release of any CDBG funds for wastewater or solid waste improvement construction, the Subgrantee shall provide written documentation that the plans and specifications have been approved by the Mississippi Department of Environmental Quality, Office of Pollution Control.

#### **C. Mississippi Public Service Commission Approval**

If applicable, prior to the release of CDBG funds for water, sewer, and gas system construction, the Subgrantee shall provide evidence that the Mississippi Public Service Commission has issued a "Certificate of Public Convenience and Necessity" for improvements in an uncertificated and/or unserved area, and/or the transfer of ownership of a system.

### **4. Building Standards**

If applicable, all building construction shall comply with the applicable codes and standards approved by the Southern Building Code and Congress International, Inc., or to locally adopted codes, whichever are more stringent.

### **5. State Aid Standards**

If applicable, streets or access roads shall be designed and constructed at least to minimum State Aid standards or to local subdivision standards, whichever are more stringent.

### **6. LMI Hook-Ups**

Low- and moderate-income persons must actually be hooked up to the system in order to be counted as beneficiaries on water, sewer, or gas projects. CDBG funds cannot be used to install nor connect service lines if the property is owned by a person who is not of low- or moderate-income, even if the renter is of low- or moderate-income. The cost of connecting LMI property

owners to the service lines can be paid from CDBG or other funds, but the connection to the system must be at no cost to the LMI beneficiaries.

#### **7. Generators and Auxiliary Power Sources**

CDBG funds may not be used for the purchase of generators or auxiliary power sources in water or sewer improvement projects. The only exception is when the generator is built-in on the wastewater pump stations.

#### **8. Nonperformance Standard**

If at the end of 12 months from the start of the contract period and construction has not begun, the Mississippi Development Authority, may, at its option, terminate this contract and recapture funds allocated. No contract extensions will be granted unless the Subgrantee can document circumstances beyond its control that prevented construction.

#### **9. Fire Safety Codes**

If applicable, the Subgrantee must comply with local fire safety codes.

#### **10. Program Income**

If any program income is generated as result from CDBG funds, the subgrantee shall return these funds to the Mississippi Development Authority. However, 570.489 (e)(2)(v)..."proceeds received from the sale of real property acquired or improved in whole or part with CDBG funds will not be considered program income if the proceeds are received more than 5 years after expiration of the grant agreement and are, therefore, exempt from being tracked."

#### **11. Application**

The application and all supporting documentation are incorporated by reference herein and made a part hereof, including any changes, modifications, deletions, or amendments contained therein.

#### **12. Paymode**

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the state. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

---



## FINANCIAL MANAGEMENT, REPORTS AND RECORD KEEPING

The local government shall comply with all MDA, State of Mississippi Office of Management and Budget (OMB) and CDBG rules, regulations, circulars, policies, and procedures on financial management for all contract expenditures. The local unit of government shall ensure that its financial management systems provide the necessary internal controls, accounting records and reporting systems to meet generally accepted accounting standards and comply with the applicable OMB uniform cost principles for the type of entity receiving the funds. MDA reserves the right to inspect the local unit of government's financial management systems and to impose additional accounting requirements to ensure that accounting requirements are being met.

### **1. Access to Records and Facilities**

The State of Mississippi, Federal monitors and auditors and any persons duly authorized by the Federal government, the State of Mississippi and MDA shall have full access to and the right to examine and copy any or all books, records, documents and other materials regardless of form or type which are pertinent to contract performance or which reflect direct and indirect costs related to this contract. Access right shall continue during the record retention period after the contract's ending date. This access right shall extend to all business hours and places where any contract activity is conducted. MDA shall include these access requirements in all subcontracts.

### **2. Audits and Monitoring**

The local unit of government shall adhere to applicable Office of Management and Budget (OMB) Circulars and other applicable Federal, State of Mississippi and MDA regulations, policies and procedures governing audits and monitoring. Recipients of Federal awards, as defined by OMB Circular 2 CFR Part 200 (formerly known as Circular A-133) and 29 CFR 99, shall maintain records that identify all Federal funds received and expended. The local unit of government shall comply with any applicable future amendments to OMB Circular 2 CFR Part 200 (formerly known as A-133) and any successor or replacement Circular or regulation.

The local unit of government shall be audited annually in accordance with Circular 2 CFR Part 200 or, if 2 CFR Part 200 is inapplicable, shall arrange for an annual audit of contract funds received from MDA. All governmental and nonprofit organizations must follow the audit requirements of OMB Circular 2 CFR Part 200.

All audits shall conform to generally accepted auditing and accounting standards and MDA policies and procedures. A copy of each year's financial audit report, which provides a specific reference to this contract, shall be mailed to MDA within one week after its receipt by the local unit of government. All audit reports shall be finalized within six months after the contract's ending date unless an alternative date is agreed to in writing by MDA. All audit costs shall be the local unit of government's responsibility.

Failure to submit all Audit documentation by the required due dates may deem the Local Units

of Government or Non-Profit Organizations in non-compliance with the Audit Requirements. **CID may impose sanctions such as suspending payments of current grants until the Audit is received and/or the eligibility for future funding.**

### **3. Leveraged Funds**

- a. The Subgrantee is held to its leveraged fund commitment as stated in the approved application.
- b. Should a portion of the matching funds not be required (i.e., low bids, MDA approved change in scope of work), MDA, Community Incentives Division, will reduce the grant proportionately so that the leveraging ratio holds constant regardless of how funds are budgeted.

### **4. In-Kind Services**

If applicable, any in-kind services to be performed by the Subgrantee or others designated as local match funds must be adequately documented or make actual dollar contributions to provide for the local match funds.

### **5. Request for Cash**

When submitting a request for cash, the subgrantee must provide the Request for Cash form sheet and the CDBG Consolidated Support Sheet. Drawdowns should be made only in the amount necessary to meet current disbursement needs. A zero balance must be maintained and funds disbursed within three (3) days.

### **6. Cost Overruns**

The subgrantee agrees to and understands that the CDBG award is limited to the amount under this agreement. Any cost overruns will be the sole responsibility of the subgrantee.

### **7. Budget Revision Acceptance**

The Subgrantee agrees and accepts all changes to the budget pages of its CDBG application; and the revised budget forms attached to this contract shall constitute the true and correct budget for the Subgrantee's CDBG project, and are hereby incorporated by reference herein and made a part of this contract.

### **8. Availability of Funds**

This contract is contingent on the availability of funds from the U.S. Department of Housing and Urban Development.

### **9. Procurement**

The local unit of government must comply with all State and Federal laws per 2 CFR Part 200 dealing with purchasing and acquisition for goods, services and other allowable cost as specified in the application. All procurements transactions, regardless of dollar amount, must be conducted in a manner to provide free and open competition

**10. Close-out Package**

Within 30 days after the completion of all activities or 60 days after the expiration of the grant agreement, the subgrantee must submit a complete and acceptable close-out package.

**SPECIAL PROVISIONS AND REGULATIONS STIPULATED BY  
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**1. Access of Grantee, State of Mississippi, HUD and Others to CDBG Documents, Papers, and Books**

The Contracted Party agrees to allow the Grantee, State of Mississippi, HUD, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of the Contracted Party which are directly pertinent to the CDBG Program for the purpose of making audits, examinations, excerpts, and transcriptions

**2. Termination of Contract For Cause**

If, through any cause, the Contracted Party shall fail to fulfill in timely and proper manner, his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Grantee shall thereupon have the right to terminate this Contract by giving written notice to the Contracted Party of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contracted Party shall entitle the Contracted Party's receipt of just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Contracted Party shall not be relieved of liability to the Grantee for damages sustained or the Grantee by virtue of any breach of the Contract by the Contracted Party. The Owner may withhold any payments to the Contracted Party for the purpose of set off until such time as the exact amount of damages due the Grantee from the Contracted Party is determined

**3. Termination for Convenience of the Grantee**

The Grantee may terminate this Contract any time by a notice in writing from the Grantee to the Contracted Party. If the Contract is terminated by the Owner as provided herein, the Contracted Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contracted Party covered by this Contract, less payments of compensation previously made provided that if less than sixty percent of the services covered by this Contract have been performed upon the effective date of such termination, the Contracted Party shall be reimbursed (in addition to the above payment) for that portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contracted Party during the Contract period which are directly attributable to the incomplete portion of the services covered by this Contract.

**4. Record-Keeping**

All records required to be kept on the project shall be maintained for at least three (3) years after final payments and until all other pending matters under the grant are closed.

**5. Health and Safety Standards**

All parties participating in this project agree to comply with Section 107 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

**6. Uniform Relocation Act Requirements**

The Contracted Party will comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as specified in regulations issued by the Secretary of the Department of Housing and Urban Development and published in 24 CFR 570-1.

**7. Citizens Participation**

The Subgrantee must follow the Citizen Participation procedures in accordance with the requirements listed in Title 24 CFR 91.115 of the Housing and Community Development Act of 1974, as amended. The Act provides for and encourages, Citizen Participation and emphasizes participation by persons of low and moderate income, particularly residents of predominantly low and moderate income neighborhoods, slum or blighted areas, and areas in which the State of Mississippi proposes to use federal funds.

**8. Environmental Compliance**

Environmental clearance must be completed within four (4) months of the award date or the contract will be voided unless the Division Director authorizes a waiver. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by recipient of a release of funds from the Mississippi Development Authority under 24 CFR Part § 58. The parties further agree that the provision of any funds to the project is conditioned on the recipient's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. No project costs shall be paid by CID prior to environmental clearance except for Application Preparation.

Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Enviro Protection Agency (EPA)

regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.

The provisions shall require reporting of violations to the granter agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329) Contracts, subcontracts, and subgrants of amounts in excess of

\$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1957 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR, 15), which prohibit the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the granter agency and the U.S. EPA Assistant Administrator for Enforcement (EN-329)

#### **9. Historic Preservation**

Both parties agree to assist the Federal granter agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 USC 469a-1 *et seq.*) by (a) consulting with the State Historic Preservation officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (CFR Part 600.8) by the activity, and notifying the Federal granter agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal granter agency and the state granter agency to avoid or mitigate adverse effects upon such properties

#### **10. Lead-Based Paint Requirements**

The Contracted Party will comply with Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form.

#### **11. Labor Standards - Davis-Bacon Act Requirements**

The Contracted Party will comply with Section 110 of the Housing and Community Development Act of 1974, as amended, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276-a5), and it will comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*). However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.

#### **12. Energy Efficiency**

All participants in the projects shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

### **13. Changes**

The Grantee may, from time to time, request changes in the scope of the services of the Contracted Party to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contracted Party's compensation which are mutually agreed upon by and between the Grantee and the Contracted Party, shall be incorporated in written amendments to this Contract.

### **14. Personnel**

The Contracted Party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Grantee. All the services required hereunder will be performed by the Contracted Party or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

### **15. Anti-Kickback Rules**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Engineer and contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

### **16. Withholding of Salaries**

If in the performance of this Contract, there is any underpayment of salaries by the Contracted Party or by any subcontracted thereunder, the Grantee shall withhold from the Contracted Party out of payment due to him an amount sufficient to pay to employees underpaid the difference between the salaries required thereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Grantee for and on account of the contracted party or subcontractor to the respective employees to whom they are due.

### **17. Claims and Disputes Pertaining to Salary Rates**

Claims and disputes pertaining to salary rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the Contracted Party to the Grantee for the latter's decision which shall be final with respect thereto.

#### **18. Equal Employment Opportunity**

During the performance of this Contract, the Contracted Party agrees to comply with Executive Order 11246, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, gender, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts, contractors and subcontractors on Federal and Federally assisted construction contracts shall take affirmative action to ensure fair treatment in employments, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation and Section for training apprenticeship.

#### **19. Section 3**

Section 3 of the Housing and Urban Development Act of 1968, is a statutory provision which requires that, to the greatest extent feasible, opportunities for training, employment, contracting and other economic opportunities be given to low and very- low income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located *in*, or owned in substantial part, by persons residing in the project area. The Sub-recipient and contractors must demonstrate a good faith effort and document compliance as set-forth by 24 CFR 135.

#### **20. Anti-Discrimination Clauses**

The Contracted Party will comply with the following clauses:

- a. Title VI of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (24 CFR 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- b. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and taking action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services. This requirement dictates some form of action to be taken by the grantee, not just passive compliance with existing laws and ordinances. Fair housing choice is the



ability of persons of similar *income* levels to have available to them a like range of housing choices regardless of race, color, national origin, religion, sex, familial status, or disability. CDBG grantees make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. It is important for grantees to be aware that this is a commitment to understand every individual's fair housing rights and ensure all local policies and practices do not hinder fair housing and when appropriate actively further fair housing.; and,

- c. Executive Order 11063, as amended by Executive Order 12259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.
- d. Section 109 of the Housing and Community Development Act of 1974, as amended which requires that no person in the United States shall on the grounds of race, color, national origin, or gender be excluded from participation in, be denied the benefits or be subjected to discrimination under, any program or activities funded in whole or in part with community development funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 796) shall also apply to any such program or activity.

#### **21. Architectural Barriers Act and Americans with Disabilities**

The contracted parties will comply with the Architectural Barriers Act and the Americans with Disabilities as described in 24 CFR Sec 487 (e).

#### **22. Discrimination Because of Certain Labor Matters**

No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

#### **23. Compliance with Local Laws**

The Contracted Party shall comply with all applicable laws, ordinances, and codes of the state and local governments, and shall commit no trespass on any public or private property in performing any of the work embraced by this Contract.

#### **24. Subcontracting**

None of the services covered by this Contract shall be subcontracted without prior written consent of the Grantee. The Contracted Party shall be as fully responsible to the Grantee for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by him. The Contracted Party shall insert in each subcontract appropriate provisions requiring compliance

with the labor standards provisions of this Contract.

**25. Assignability**

The Contracted Party shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Grantee provided that claims for money due or to become due the Contracted Party from the Grantee under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

**26. Conflict of Interest of Members of Local Public Agency and Others**

The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie. The Contracted Party will comply with Section 25-4-105, Mississippi Code Annotated (1972), which prohibits any public servant from using his official position to obtain pecuniary benefit for himself other than compensation provided for by law or for any relative or business with which he is associated and which further provides that a public servant may not be interested, during the term for which he has been chosen, or within one (1) year thereafter, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any

portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The Contracted Party will also be aware of and avoid any violation of Section 24-4-117 and 25-4-119, Mississippi Code Annotated (Supp. 1972), which prescribes a criminal penalty for any public servant convicted of a violation of this Ethics in Government section.

**27. Interest of Certain Federal Officers**

No member of or delegate to the Congress of the United States and no Resident Commissioner, shall be admitted any share or part of this Contract or to any benefit to arise therefrom.

**28. Interest of Contractor**

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that in the performance of this Contract no person having any such interest shall be employed.

**29. Political Activity**

The Contracted Party will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**30. Compliance with Office of Management and Budget**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, and A-54, as they relate to the use of Federal funds under this contract.

**31. Flood Insurance Purchase Requirements**

Both parties agree to comply with the flood insurance purchase requirements of Section 102(2) of the Flood Disaster Protection Act of 1973, (PL 93-234, 87 Stat. 975) approved December 31, 1976. Section 102 (a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase, "Federal financial assistance," includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

**32. Program Monitoring**

Both parties agree to assist and cooperate with the Federal grantor agency and the state grantor agency or their duly designated representatives in the monitoring of the project or projects to which this grant relates, and to provide in form and manner approved by the state grantor agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

**33. Discrimination Due to Beliefs**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

**67 Confidential Findings**

All of the reports, information, data, etc., prepared or assembled by the Contracted Party under this Contract are confidential, and the Contracted Party agrees that they shall not be made available to any individual or organization without prior written approval of the Grantee.

**34. Third-Party Contracts**

The Subgrantee shall include in all contracts with Participating Parties receiving grant funds

provisions requiring the following:

- a. Each such Participating Party keeps and maintains books, records, and other documents relating directly to the receipt and disbursement of such grant funds; and,
- b. Any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of such Participating Party until the completion of all close-out procedures respecting this grant and the final settlement and conclusion of all issues arising out of this grant.

The Subgrantee shall include in all contracts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of the Mississippi Development Authority, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all close-out procedures respecting this grant.

### **35. Excessive Force**

The contracted parties will adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

## Federal Labor Standards Provisions

## U.S. Department of Housing and Urban Development Office of Labor Relations

### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
  - (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
  - (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
  - (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false.... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.



(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.